Supreme Court, U. S.
FILED
NOV 27 1974
MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1974

No. 74-75

UNITED STATES OF AMERICA, ET AL.,
Petitioners

—v.—

ELIZABETH JANE HALL

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED AUGUST 5, 1974
CERTIORARI GRANTED, OCTOBER 15, 1974

IN THE

Supreme Court of the United States

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No. 74-75

UNITED STATES OF AMERICA, ET AL.,
Petitioners

—v.—

ELIZABETH JANE HALL

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

INDEX[1]

	Page
Docket Entries	1
Complaint	2
Exhibit A, Notice of Termination of Taxable Year	11
Exhibit B, Statement of Tax Due on Federal Tax Return	13
Temporary Restraining Order	14
Amended and Supplemental Order	16
Answer	21
Order Granting Certiorari	25

[1] The findings of fact, conclusions of law, opinion, and preliminary injunction of the district court are set forth at Pet. App. A 1a-6a. The opinion and judgment of the court of appeals are set forth respectively at Pet. App. B 7a-10a and Pet. App. C 11a-12a.

RELEVANT DOCKET ENTRIES

1973		
June	20	*Certified record* (1 vol. of pleadings and transcript), filed; and cause docketed
"	22	Appearance of counsel for Appellee
July	2	Appellant's statement of issues presented and designation of record for appendix
"	12	Appearance of counsel for Appellant
"	30	Appearance of counsel for Appellants
"	30	Twenty-five copies of Brief for Appellants
"	30	Ten copies of Appendix
Aug.	13	Motion: Appellee's brief for 45 days (Granted, 8/22/73)
Oct.	5	Twenty-five copies of Brief for Appellee, with proof of service
"	23	Twenty-five copies of Reply Brief for Appellants, with proof, of service
Dec.	11	Cause argued and submitted (Before: Weick, Edwards and Lively, JJ.) BB-2
1974		
Mar.	12	Judgment of the District Court affirmed CC-4
"	12	Opinion Per Curiam (Weick, Edwards, Lively, JJ.)
Apr.	2	Mandate issued (No costs taxed) Opinion with mandate
June	5	Copy of letter from Supreme Court advising that on 5/31/74 extension of time to file petition for certiorari was granted to 8/9/74
Aug.	8	Notice of filing petition for certiorari on 8/5/74 (Sup. Ct. 74-75)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action 7571-G

[Filed February 13, 1973]

ELIZABETH JANE HALL
Route 5, Box 98
Shelbyville, Kentucky 40065
PLAINTIFF

vs.

UNITED STATES OF AMERICA,
THOMAS P. MCHUGH,
Acting District Director of Internal
Revenue for the District of Kentucky,

ELMER SNYDER,
Group Supervisor of Internal Revenue
for the District of Kentucky, and

DONALD POWERS
Route 4
Lawrenceburg, Kentucky
DEFENDANTS

COMPLAINT

1. Plaintiff is a citizen and resident of the United States and of Shelby County, Kentucky. Individually named Defendants are sued individually and in their official capacities.

2. This is an action for damages and to enjoin the Defendants from continuing in force and effect a purported assessment and levies against the property of the Plaintiff allegedly to be applied to federal income taxes due or to become due in respect of any period falling within the calendar year 1973, and for mandatory injunction ordering the return to Plaintiff of her property, including money, heretofore seized pursuant to such levies.

Jurisdiction is founded upon 28 USC Section 1340, Section 6213(a) of the Internal Revenue Code of 1954, and 28 USC 1361, all as supplemented by the following provisions of the Administrative Procedure Act: 5 USC, Sections 702, 703, 704 and 706; 28 USC Sections 1331 and 1343; 42 USC Section 1983. The action arises under the Constitution and laws of the United States. The amount in controversy exceeds the sum of Ten Thousand ($10,000.00) Dollars, exclusive of interest and costs.

3. Plaintiff, an individual, jointly with her husband, Sterling Hall, filed her Federal income tax returns for the years 1969, 1970 and 1971 and for previous years on a calendar year basis, and the calendar year constitutes the correct taxable year for the Plaintiff under Internal Revenue Code Section 441 for the purpose of any and all federal income tax liabilities in respect to any period within the calendar year 1972 and 1973.

4. On or about February 1, 1973, Plaintiff received from the Defendant, Thomas P. McHugh, Acting District Director of the Internal Revenue Service for the District of Kentucky, a letter dated February 1, 1973, a true copy of which is attached hereto as Exhibit A. Said letter purported to terminate Plaintiff's taxable year beginning January 1, 1973 on February 1, 1973, the date of said letter. On or about February 1, 1973, the Defendants purported to assess federal income tax for the period January 1, 1973 through January 30, 1973 against Plaintiff in amount of $52,680.25, as set forth in Exhibit B attached hereto and made a part hereof.

5. Notwithstanding language to the contrary contained in Exhibit B, Plaintiff has not filed a federal income tax return for the period January 1, 1973 through January 30, 1973 and by reason of Section 6072 of the Internal Revenue Code, no return has been due to be filed by Plaintiff. If any income tax return for said period has been filed, on behalf of or in respect of Plaintiff by any person, such return has been illegally and unlawfully filed and is without force or effect.

6. Purportedly acting under authority of Section 6851 of the Internal Revenue Code, and the determination set forth in Exhibit A and the purported assessment set

forth in Exhibit B, Defendants on or about February 1, 1973 levied upon and seized the following property of Plaintiff:

One 1970 Volkswagon Squareback was seized. The certificate of registration is attached as Exhibit C.

Agents of the Defendants further informed Plaintiff that they had a levy on all of her property and that she could not move any of her personal property across the Shelby County line, including furniture, personal effects, and clothing, items specifically exempted, in part, from Levy under Section 6334 of the Internal Revenue Code of 1954.

On or about February 9, 1973, C. A. Smith, an agent of Defendants, further informed Plaintiff by telephone that Defendants intended to sell her car within one week; that she could buy it herself but that it would probably be retaken by Defendants. Agent Smith further informed Plaintiff that Defendants would be coming to get her furniture and other personal property later in the month.

The above property constitutes virtually the entire estate of Plaintiff. The levy is appended as Exhibit D.

7. Defendants have not, to date of this complaint, mailed to Plaintiff the notice of deficiency described in Internal Revenue Code Section 6212, which notice of deficiency for the period January 1, 1973 through January 30, 1973 is required to be mailed to Plaintiff by reason of Internal Revenue Code Section 6861(b) within sixty days after making of such assessment, for which failure injunctive relief lies under Internal Revenue Code Section 6213.

8. Defendants' failure to send by registered or certified mail (or by any other means) to Plaintiff within sixty days after February 1, 1973 or before or after said assessment or at any time whatever, a statutory notice of deficiency, as they were required to do by Section 6861(b) of the Internal Revenue Code, constituted a deprivation of Plaintiff's property without due process of law, against which injunctive relief lies by reason of Internal Revenue Code Section 6213(a) and otherwise. Defendants have in fact announced an intention to unlawfully sell Plaintiff's property prior to the expiration of the statutory sixty days.

9. Defendants' failure to send Plaintiff a statutory notice of Deficiency deprived Plaintiff of the right to contest Defendants' purported assessment in the United States Tax Court, as such notice is a jurisdictional prerequisite in such Court, the deprivation of which right violated the due process clause of the Fifth Amendment of the Constitution of the United States. Plaintiff further states that the threat of an imminent sale of said property is in violation of Section 6335 of the Internal Revenue Code in that the requisite statutory notice of sale has not been given.

10. Defendants' determination to terminate Plaintiff's taxable year and the levy on and seizure of Plaintiff's property and the failure to send statutory notice of deficiency as herein set forth, was arbitrary, capricious, an abuse of discretion, in excess of statutory authority and contrary to Plaintiff's statutory and constitutional rights to due process of law, for all of which Defendants' acts and omissions review may be had, under 5 USC 706.

11. Alternatively, Plaintiff states that if the Defendants were *not* required to send a statutory notice of deficiency to Plaintiff within sixty days after February 1, 1973 or before attempting to sell said property prior to the expiration of sixty days, and if Defendants' acts and omissions with regard to Plaintiff as set forth in paragraphs 4 and 6 hereof were otherwise in compliance with Internal Revenue Code Section 6851, then in such event said Section 6851, Internal Revenue Code, is repugnant to the Constitution of the United States, and in particular to the Fifth Amendment thereof, in that it sanctions a violation of the due process clause of said Amendment, by authorizing the Secretary of the Treasury or his delegate, including any District Director, or Assistant Director of Internal Revenue, such as the Defendant herein named, to precipitously and without restraint by any objective standard of reasonableness, terminate the period for which a citizen is otherwise entitled to compute his taxable income (including deductions) and pay his tax; to make an arbitrary, capricious,

subjective determination of "income tax" of a citizen, without requirement of disclosing (by statutory notice of deficiency or otherwise) the facts and figures, if any, used to compute such "tax" and to seize the entire property and estate of a citizen pursuant to such an arbitrary determination and to threaten to sell same, all of which acts have been done with respect to Plaintiff, and for all of which, in such event, for reasons hereafter demonstrated in paragraph 12, the affected citizen may have no legal remedy. Plaintiff further states that Defendants have acted contrary to an order of the Honorable Charles M. Allen, United States District Judge for the Western District of Kentucky at Louisville entered September 20, 1972 enjoining similar behavior under similar facts in *Rambo* v. *United States*, Civil Action number 7370-A. A copy of the order of the court is appended as Exhibit E.

12(a) For the reasons stated in paragraph 9 hereof, Plaintiff cannot appeal Defendants' assessment, if in fact said seizures were pursuant to a true assessment, to the United States Tax Court.

(b) Plaintiff cannot litigate the merits of the Defendants' determination of tax by a refund suit in the United States District Court or in the United States Court of Claims by reason of the requirement of *Flora* v. *United States*, 362 U.S. 145 (1960), decision on rehearing of 357 U.S. 63 (1958), to the effect that a taxpayer must pay the full amount of what income tax the government says he owes for any period before the taxpayer may sue for the refund of any part thereof, and Plaintiff is wholly unable to comply with such requirement here as her entire estate has been seized pursuant to levy, and said estate is less than the amount determined to be owed by the Defendants.

(c) Since Defendant has seized Plaintiff's entire estate, Plaintiff is unable to furnish a bond described in Section 6851(e) of the Internal Revenue Code.

(d) For the foregoing reasons, Plaintiff has no adequate remedy at law.

13. Upon information and belief, Defendant Elmer Snyder has conspired or entered into a concert of action

with Defendant McHugh and other persons, both known and unknown, who acted under color of the laws of the Commonwealth of Kentucky together with Defendants Snyder and McHugh to deprive Plaintiff of rights secured by the Constitution and laws of the United States. Purporting to act under color of law, and in concert with certain state actors of the Commonwealth of Kentucky, Defendant Snyder caused an amount of $52,680.25 in alleged taxes to be assessed against Plaintiff knowing such tax assessment to be fraudulent and without foundation in law or fact. The purpose of his action and that of his co-conspirators was to harrass and intimidate Plaintiff rather than to collect taxes owed the United States. Defendant Snyder's acts were done maliciously with full knowledge that no such taxes were owed and with full knowledge that he had no basis for such assessment.

14. Upon information and belief, Defendant Lieutenant Donald Powers, of the Kentucky State Police, acting under color of the laws, customs, or usages of the Commonwealth of Kentucky, and under color of his apparent authority as a law enforcement officer of the Commonwealth of Kentucky, has conspired or acted in concert with Defendants McHugh and Snyder and other state and federal actors, both known and unknown, to deprive Plaintiff of rights and liberties secured to her by the Constitution and laws of the United States, and more particularly the Fifth, Fourteenth and Ninth Amendments to the Constitution of the United States. Defendant Powers' actions have contributed to the damages suffered by Plaintiff set out in Paragraph 15. His actions have been undertaken with full knowledge of his lack of legal authority. Defendant Powers has further individually defamed Plaintiff as part of a continuing conspiracy or concert of action to deprive her of her legally secured rights. The defamation consisted of saying to friends and associates of Plaintiff that she had been selling narcotics. Plaintiff states that such utterances were false and were defamatory per se. Defendant Powers has further falsely stated to Defendants McHugh and Snyder that Plaintiff has been engaged in selling narcotics. This false and malicious information was used by Defendants

McHugh and Snyder, knowing it to be false, as pretext, excuse, or justification for the unlawful tax assessments and levies complained of to deprive Plaintiff of her right to be free from the unconstitutional taking of property as secured by the Fifth and Fourteenth Amendments to the Constitution of the United States. Defendant Powers has also unlawfully seized or caused to be seized certain personal property, including $5700 in cash, belonging to Plaintiff. As part of the conspiracy or concert of action complained of, Defendant Powers together with Defendants McHugh and Snyder and other persons, both known and unknown, caused certain of the seized property to become part of the property against which Defendants McHugh and Snyder placed the unlawful levy complained of. Other personal property belonging to Plaintiff, including a gold watch, was converted by Defendant Powers to his own use. The actions of Defendant Powers, both individually and in conspiracy or concert of action with Defendants McHugh and Snyder and other persons, both known and unknown, was undertaken with malice for the purpose of denying Plaintiff the right to be free from invasion of privacy and from the unconstitutional taking of property without due process of law, rights secured to her by the Ninth, Fifth, and Fourteenth Amendments to the Constitution of the United States.

15. Plaintiff has suffered irreparable injury as a result of Defendants' acts and omissions and unless the injunctive relief herein prayed for is granted, Plaintiff will suffer further irreparable injury.

16. As a result of Defendants' actions, Plaintiff has suffered harrassment and embarrassment, great suffering, both physical and mental, loss of respect and reputation in her community, defamation of character, loss of earnings and loss of ability to transact her business.

17. Upon information and belief, Defendants' acts were malicious, wanton, willful, vindictive and done in a spirit of mischief knowing said acts to be unlawful and in direct violation of a known existing order of this Court, entitling Plaintiff to punitive damages.

18. Plaintiff has had to employ counsel to prevent the unlawful enforcement of assessed taxes and the unlawful seizure and sale of her property.

WHEREFORE, Plaintiff prays and demands:

(1) a preliminary and permanent injunction enjoining Defendants and any agency or employee thereof to return all property heretofore seized pursuant to said levies and assessment together with interest on any money, and to release all of said levies;

(2) a preliminary and permanent injunction enjoining Defendants from collecting upon or seeking to enforce by lien, levy, sale, or otherwise, said purported assessment against Plaintiff;

(3) actual damages against the Defendants, jointly and severally, in the amount of Twenty Thousand ($20,000.00 Dollars;

(4) punitive damages against the Defendants, jointly and severally, in the amount of One Million ($1,000,000.00) Dollars;

(5) a trial by jury on all issues so triable;

(6) the costs of this action;

(7) a reasonable attorney fee for Plaintiff's attorneys;

(8) all other relief, both legal and equitable, to which Plaintiff may appear to be entitled.

/s/ Donald M. Heavrin
DONALD M. HEAVRIN
914 Republic Building
Louisville, Kentucky 40202
Telephone: 585-4324

/s/ Edwin F. Kagin, Jr.
EDWIN F. KAGIN, JR.
906 Republic Building
Louisville, Kentucky 40202
Telephone: 584-9793

Attorneys for Plaintiff

VERIFICATION

State of Kentucky
County of Jefferson

Elizabeth Jane Hall (Plaintiff), being duly sworn, deposes and says that she resides in Shelby County; that she is the Plaintiff herein; and that she has read the foregoing complaint and knows the contents thereof and that the same are true of her own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters she believes them to be true.

/s/ Elizabeth Jane Hall
Plaintiff

Subscribed and sworn before me this 10th day of February, 1973.

/s/ EDWIN F. KAGIN, JR.
Notary Public
State at Large
Kentucky

My commission expires April 25, 1976.

EXHIBIT A

US TREASURY DEPARTMENT

[SEAL]

District Director
Internal Revenue Service
Louisville, Kentucky 40201

February 1, 1973

Mrs. Jane W. or Elizabeth Jane Hall
Route #5, Box 98
Shelbyville, Kentucky 40065

Dear Mrs. Hall:

You are hereby notified that I find you involved in illicit drug activities, thereby tending to prejudice or render ineffectual collection of income tax for the period 1-1-73 thru 1-30-73.

Accordingly, under authority of Section 6851 of the Internal Revenue Code and Regulations, I declare the taxable period 1-1-73 thru 1-30-73 immediately terminated and the income tax for such period immediately due and payable. Any such tax in the following amount that is unpaid will be immediately assessed against you:

TAXABLE PERIOD	TAX	PENALTY
1-1-73 thru 1-30-73	$52,680.25	

Demand for immediate payment of the full amount of this tax is hereby made.

Under Section 443 of the Internal Revenue Code you are required to file a return for your terminated taxable period. Such termination and filing does not relieve you of the responsibility for filing a return for your usual annual accounting period under Section 6012 of the Code. Any amount collected as a result of termination of the period will be applied against the above assessment

and credited against the tax finally determined to be due on your annual return.

Very truly yours,

/s/ Thomas P. McHugh
THOMAS P. MCHUGH
Acting District Director

EXHIBIT B

6125103219000-3

[SEAL]

US DEPARTMENT OF THE TREASURY
Internal Revenue Service
Director

Date Of This Notice: 2/1/73

DLN—For IRS Use Only—670—570

Jane W. or Elizabeth Jane Hall
Route 5 Box [redacted]
Shelbyville, Ky. 40065
403-70-7498

If you find it necessary to inquire about your account, please refer to this number—

Form Number: 1040

Tax Period Ended: 1/30/73

Assessment Date: 2/1/73

Statement Of Tax Due On Federal Tax Return

This is a notice of tax due on your return identified above. The amount shown as "Balance Due" should be paid the date of this notice. Please make your check or money order payable to "Internal Revenue Service" and send it with this notice to the address shown above.

Reference	Assessment	Credit	Balance Due
	52,680.25		$52,680.25

Please return this copy with your payment to the address shown above.

Form 3552 (Part 3) (Rev. 7-70)

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action 7571-G

[Filed February 16, 1973]

ELIZABETH JANE HALL, PLAINTIFF

—*vs*—

UNITED STATES OF AMERICA, THOMAS P. MCHUGH, ELMER SNYDER, DONALD POWERS, DEFENDANTS

TEMPORARY RESTRAINING ORDER

This cause came on to be heard on Plaintiff's verified complaint, and it appearing to the court that the Defendants are committing acts and are about to commit acts as set forth in Plaintiff's complaint, and will continue to do so unless restrained by order of this court, and that immediate and irreparable injury, loss or damage will result to Plaintiff before notice can be given and the Defendants and their attorney or attorneys can be heard in opposition to the granting of a temporary restraining order, and that Defendants, and each of them, including the unknown members of their group as alleged in the complaint, have caused certain property of Plaintiff's to be seized pursuant to a purposed jeopardy tax assessment prior to the giving of the required statutory notice and have evidenced a determination to sell Plaintiff's automobile that was so seized prior to the giving of such notice and that Defendant Powers and his agents have and are causing Plaintiff to be intimidated and harassed by unlawful searches and trespasses, it is

ORDERED, that Thomas P. McHugh, Elmer Snyder and Donald Powers, their agents, servants, employees and attorneys, and all persons in active concert and participation with them, be and they hereby are restrained from in any manner, either directly or indirectly, selling Plaintiff's automobile or any of her property and from harassing or intimidating Plaintiff in any manner including but not limited to trespassing on or seizing any of her property of whatever nature; provided, that Plaintiff first give security in the sum of $50.00 for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained, such bond to be approved by the court or by the clerk of the court; and it is further

ORDERED, that this order expired within 12 days after entry and agreement unless within such time the order for good cause shown is extended, or unless the Defendants consent that it may be extended for a longer period; and it is further

ORDERED, that Plaintiff's motion for a preliminary injunction be set down for hearing on the 28 day of Feb., 1973, at 9:30 o'clock a.m., at Ct. Rm. 2; and it is further

ORDERED, that copies of this order, together with proper summons issuing by the clerk of this court, be immediately served by the United States Marshal upon the Defendants.

Issued at 11:24 a.m., Feb. 16, 1973.

/s/ [Illegible]
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil Action 7571-G

[Filed February 28, 1973]

ELIZABETH JANE HALL, PLAINTIFF

—*vs*—

UNITED STATES OF AMERICA, THOMAS P. MCHUGH, ELMER SNYDER, DONALD POWERS, DEFENDANTS

AMENDED AND SUPPLEMENTAL COMPLAINT

Plaintiff moves this Court for leave to amend and supplement her complaint previously filed herein in the following particulars:

1. Amending Paragraph 2 to include the following allegations of jurisdiction: "42 USC Sections 1985 and 1986"

2. Adding to the complaint the following paragraphs:

"19. Upon information and belief defendant C. A. Smith, an agent of the Internal Revenue Service, has conspired or entered into a concert of action with defendant Powers and other persons, both known and unknown, who acted under color of the laws of the Commonwealth of Kentucky together with Snyder and McHugh to deprive plaintiff of rights secured by the Constitution and laws of the United States. Purporting to act under color of law, and in concert with certain state actors of the Commonwealth of Kentucky, defendant Smith caused to be served on plaintiff a Notice of Seizure, a Notice of Sealed Bid Sale, and a Notice of Levy, set forth as Exhibits F, G and H, respectively, attached hereto and made part hereof. Defendant caused the Notice of Seizure, Notice of Sealed Bid Sale and Notice of Levy to be served knowing such to be without foundation in law or fact. The purpose of defendant's actions

and that of his co-conspirators was to harrass and intimidate plaintiff rather than secure property for the lawful collection of taxes owed the United States. Defendant Smith's acts were done maliciously with full knowledge that no such taxes were owed and with full knowledge that the Internal Revenue Service had no basis for such assessment.

"20. Upon information and belief, defendants McHugh, Snyder, Powers and Smith, together with other persons both known and unknown, have individually and inconcert of actions or conspiracy done the following:

a. On or about the first of February, 1973, defendants or their agents drove up and down plaintiff's driveway trespassing on plaintiff's property with the intent of annoying, harrassing and embarrassing the plaintiff.

b. On or about the evening of the 9th of February, 1973, defendants flew over plaintiff's house with a helicopter, hovering above her house shining a spotlight in the plaintiff's windows with the intent to annoy, embarrass, harrass and disgrace the plaintiff.

c. On or about the evening of the 6th of February, 1973, and on dates subsequent thereto, defendants or their agents parked an automobile at the end of the plaintiff's driveway and flashed automobile headlights into plaintiff's windows in an attempt to harrass, embarrass and annoy the plaintiff.

d. On or about the evening of the 13th of February, 1973, defendants came onto the plaintiff's property with flashlights and examined the vehicles of the leasee of the plaintiff.

e. On or about the 17th of February, 1973, defendants harrassed and annoyed the plaintiff by telephone calls from 11:00 a.m., until 12:00 midnight, calling the plaintiff and refusing to identify themselves, saying only "Three Guesses" when asked who was calling and further annoying the plaintiff by calling and leaving the line open for extended periods of time.

f. On or about the 19th of February, 1973, defendants broke into the cottage behind the plaintiff's house and made a shambles of the cottage damaging the cottage

and stealing a stereo and a pistol which were converted to their own use.

g. On or about the 20th of February, 1973, and on or about the 21st of February, 1973, the defendants harrassed and annoyed the plaintiff by calling and refusing to identify themselves saying only "Three Guesses" when asked to identify themselves.

h. On or about the 25th of February, 1973, defendants shot an Irish Setter dog that belonged to a co-tenant who occupied the cottage described in subsection f above.

3. Adding the following paragraph to the plaintiff's demand for relief:

"9. A preliminary and permanent injunction enjoining defendants and any agency or employee thereof from harrassing or intimidating plaintiff in any manner whatsoever and from interfering with the free exercise of any of her rights secured by the Constitution and laws of the United States.

The grounds for this motion are as follows:

(a) The amendment to Paragraph 2 merely adds additional jurisdictional grounds corresponding to acts of the defendants that were committed both before and after the filing of the initial complaint.

(b) Pursuant to Rule 15(d), Paragraphs 19 and 20 are added setting forth transactions or occurrences or events which have happened since the date of the filing of the original complaint, and the interests of justice are served by a complete disposition of the legal issues in the same forum.

(c) The addition of Paragraph 9 to the plaintiff's demand for relief recognizes the existence of a remedy provided to the plaintiff under both state and federal law, and justice demands that the plaintiff be entitled to all remedies available at law or equity.

(d) The amendments to the plaintiff's complaint will not cause any prejudice to the defendants in maintaining their defense on the merits of the case.

/s/ Donald M. Heavrin
DONALD M. HEAVRIN
906 Republic Building
Louisville, Kentucky 40202
Telephone: 585-4324

/s/ Edwin F. Kagin, Jr.
EDWIN F. KAGIN, JR.
906 Republic Building
Louisville, Kentucky 40202
Telephone: 584-9793

Attorneys for Plaintiff

VERIFICATION

State of Kentucky
County of Jefferson

Elizabeth Jane Hall (Plaintiff), being duly sworn, deposés and says that she resides in Shelby County; that she is the Plaintiff herein; and that she has read the foregoing amended and supplemental complaint and knows the contents thereof and that the same are true of her own knowledge except as to the matters therein states to be alleged on information and belief, and as to those matters she believes them to be true.

/s/ Elizabeth Jane Hall
Plaintiff

Subscribed and sworn before me this 27th day of February, 1973.

/s/ EDWIN F. KAGIN, JR.
Notary Public
State at Large
Kentucky

My Commission expires April 25, 1976.

[Certificate omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

Civil No. 7571-G

[Filed April 12, 1973]

ELIZABETH JANE HALL, PLAINTIFF

v.

UNITED STATES OF AMERICA, ET AL., DEFENDANTS

ANSWER OF THE DEFENDANTS THE UNITED STATES OF AMERICA, THE DISTRICT DIRECTOR OF THE INTERNAL REVENUE, AND ELMER SNYDER

Come now the defendants, the United States of America, the District Director of Internal Revenue, and Elmer Snyder, an employee of the Internal Revenue Service, by their attorney, George J. Long, United States Attorney for the Western District of Kentucky, and for their answer to the plaintiff's Complaint and Amended Complaint, state as affirmative defenses:

FIRST DEFENSE

For a first defense, the defendants allege that the Complaint and the Amended Complaint fail to state a claim upon which relief may be granted.

SECOND DEFENSE

For a second defense, the defendants allege that this Court is deprived of jurisdiction to enjoin the assessment or collection of federal taxes by Section 7421 of the Internal Revenue Code of 1954.

THIRD DEFENSE

For a third defense, the defendants allege that this Court lacks jurisdiction to consider the plaintiff's claims for money damages against them, because of the application of Section 2680(c), Title 28, United States Code.

FOURTH DEFENSE

For a fourth defense, the defendants allege that this Court lacks jurisdiction over them, for the reason that the United States has not waived sovereign immunity, and has not consented to suit against itself and its agents in an action of this nature.

FIFTH DEFENSE

For a fifth defense, the defendants allege that the plaintiff must be denied any equitable relief, by virtue of her failure to file an income tax return, as required by Section 443 of the Internal Revenue Code of 1954.

For further answer to the plaintiff's Complaint and Amended Complaint, the defendants allege as follows:

1. The defendants admit the allegations of fact contained in Paragraph No. 4 of the Complaint.

2. The defendants deny the allegations of fact and conclusions of law contained in Paragraphs Nos. 9, 10, 11, 13, 14, 15, 16 and 17 of the Complaint and Paragraph No. 20 of the Amended Complaint.

3. The defendants are without knowledge or information sufficient to form a belief as to the allegations of fact contained in Paragraphs Nos. 1, 3, and 18 of the Complaint.

4. The defendants admit that this action seeks injunctive relief and money damages, but otherwise deny all allegations of fact and conclusions of law contained in Paragraph No. 2 of the Complaint.

5. The defendants admit that the plaintiff has not filed a federal income tax return for the period from January 1, 1973, through January 30, 1973, but otherwise deny all allegations of fact and conclusions of law contained in Paragraph No. 5 of the Complaint.

6. The defendants admit that a Volkswagon automobile belonging to the plaintiff has been levied upon and seized by employees of the Internal Revenue Service, and that said automobile has been offered for sale, but the defendants are otherwise without knowledge or information sufficient to form a belief as to the allegations of fact contained in Paragraph No. 6 of the Complaint.

7. The defendants admit that the Internal Revenue Service has not mailed to the plaintiff a notice of deficiency for the period January 1, 1973, through January 30, 1973, but deny that there exists any obligations to mail any such notice, and otherwise deny all allegations of fact and conclusions of law contained in Paragraph No. 7 of the Complaint.

8. The defendants admit that, had not the Orders of this Court intervened, the Internal Revenue Service would have sold certain property belonging to the plaintiff, but otherwise deny all allegations of fact and conclusions of law contained in Paragraph No. 8 of the Complaint.

9. The defendants admit that the plaintiff cannot immediately petition the United States Tax Court for a redetermination of her assessed liability for the aforesaid 30-day period, but the defendants are otherwise without knowledge or information sufficient to form a belief as to the allegations of fact contained in Paragraph No. 12 of the Complaint.

10. The defendants admit that a certain Notice of Seizure, a certain Notice of Sealed Bid Sale, and a certain Notice of Levy were served upon the plaintiff by the Internal Revenue Service, but otherwise deny all allegations of fact and conclusions of law contained in Paragraph No. 19 of the Amended Complaint.

WHEREFORE, the defendants, the United States, the District Director of Internal Revenue, and Elmer Snyder,

demand judgment dismissing this action, with all costs charged to the plaintiff.

GEORGE J. LONG
United States Attorney

By: _____
Assistant United States Attorney

RICHARD F. MITCHELL
Trial Attorney
Tax Division
Department of Justice
Washington, D.C. 20530

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a copy of the foregoing Answer was served by mailing in the United States mail, postage prepaid, on the 10 day of April, 1973, as follows:

Donald M. Heavrin, Esquire
914 Republic Building
Louisville, Kentucky 40202

Edwin F. Kagin, Jr., Esq.
906 Republic Building
Louisville, Kentucky 40202

/s/ _____
RICHARD F. MITCHELL
Trial Attorney
Tax Division
Department of Justice
Washington, D.C. 20530

SUPREME COURT OF THE UNITED STATES

No. 74-75

UNITED STATES ET AL., PETITIONERS,

v.

ELIZABETH JANE HALL

ORDER ALLOWING CERTIORARI. Filed October 15, 1974

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is set for oral argument in tandem with No. 73-1808.

☆ U. S. GOVERNMENT PRINTING OFFICE, 1974 562750 61